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PART II — Section 2

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इस भाग में अलग संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on 6th December, 2005:—

I

BILL No. CXXI OF 2005

A Bill further to amend the Chartered Accountants Act, 1949.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Chartered Accountants (Amendment) Act, 2005.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Short title and
commencement.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

38 of 1949.

2. In the Chartered Accountants Act, 1949 (hereinafter referred to as the principal Act), in section 2, (1) in sub-section (1), —

Amendment
of section 2.

(i) after clause (a), the following clauses shall be inserted, namely:—

‘(aa) “Authority” means the Appellate Authority constituted under section 22A;

‘(aaa) “Board” means the Quality Review Board constituted under section 28A’;

(ii) after clause (e), the following clause shall be inserted, namely:—

‘(ea) “notification” means a notification published in the Official Gazette;’.

(iii) after clause (h), the following clauses shall be inserted, namely:—

‘(ha) “specified” means specified by rules made by the Central Government under this Act;

‘(hb) “Tribunal” means a Tribunal established under sub-section (1) of section 10B;’.

Amendment
of section 4.

3. In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv), (v) and (vi) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may, with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.”.

Amendment
of section 5.

4. In section 5 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) A member, being an associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a chartered accountant shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute and shall be entitled to use the letters F. C. A. after his name to indicate that he is a fellow of the Institute of Chartered Accountants:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.”.

Amendment
of section 6.

5. In section 6 of the principal Act,—

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Every such member shall pay such annual fee for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.”.

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.”.

6. In section 9 of the principal Act,—

Amendment of section 9.

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Council shall be composed of the following persons, namely:—

(a) not more than thirty-two persons elected by the members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,—

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under Second Schedule of this Act, for a period of six years,

from the completion of period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than eight persons to be nominated in the specified manner, by the Central Government.”;

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) No person holding a post under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2), for a period of three years after he ceases to be an auditor.”.

7. For section 10 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 10.

“10. A member of the Council, elected or nominated under sub-section (2) of section 9, shall be eligible for re-election or, as the case may be, re-nomination:

Re-election or re-nomination to Council.

Provided that no member shall hold the office for more than three consecutive terms:

Provided further that a member of the Council, who is or has been elected as President under sub-section (1) of section 12, shall not be eligible for election or nomination as a member of the Council.”.

8. After section 10 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 10A and 10B.

“10A. In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of declaration of the result of election to the Secretary of the Institute, who shall forward the same to the Central Government.

Settlement of dispute regarding election.

Establishment
of Tribunal.

10B. (1) On receipt of any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

(2) A person shall not be qualified for appointment,—

(a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term and who is not a sitting member of the Council or who has not been a candidate in the election under dispute; or

(c) as a Member unless he holds the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the Council.”.

Amendment
of section 12.

9. In section 12 of the principal Act,—

(i) in sub-section (3), after the words “he shall be eligible for re-election”, the words, brackets and figure “under sub-section (1)” shall be inserted;

(ii) in sub-section (4), —

(a) for the word “President” occurring at both the places, the words “President and the Vice-President” shall be substituted;

(b) for the words “charge of his duties”, the words “charge of their duties” shall be substituted.

Amendment
of section 13.

10. In section 13 of the principal Act,—

(i) in sub-section (2), after the words “meetings of the Council”, the words “or he has been found guilty of any professional or other misconduct and awarded penalty of fine,” shall be inserted;

(ii) in the proviso to sub-section (3), for the words “six months”, the words “one year” shall be substituted.

11. For section 15 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 15.

Functions of
Council.

“15. (1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include —

(a) to approve academic courses and their contents;

(b) the examination of candidates for enrolment and the prescribing of fees therefor;

- (c) the regulation of the engagement and training of articled and audit clerks;
- (d) the prescribing of qualifications for entry in the Register;
- (e) the recognition of foreign qualifications and training for the purposes of enrolment;
- (f) the granting or refusal of certificates of practice under this Act;
- (g) the maintenance and publication of a Register of persons qualified to practice as chartered accountants;
- (h) the levy and collection of fees from members, examinees and other persons;
- (i) subject to the orders of the appropriate authorities under the Act, the removal of names from the Register and the restoration to the Register of names which have been removed;
- (j) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (k) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;
- (l) the maintenance of a library and publication of books and periodicals relating to accountancy;
- (m) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;
- (n) to enable functioning of the Quality Review Board;
- (o) consideration of the recommendations of the Quality Review Board made under clause (a) of section 28B and the details of action taken thereon in its annual report; and
- (p) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time.”.

12. After section 15 of the principal Act, the following section shall be inserted, namely:—

“15A. (1) Subject to the provisions of this Act, any University established by law or any body affiliated to the Institute, may impart education on the subjects covered by the academic courses of the Institute.

Insertion of
new section
15A.
Imparting
education by
Universities
and other
bodies.

(2) The Universities or bodies referred to in sub-section (1) shall, while awarding degree, diploma or certificate or bestowing any designation, ensure that the award or designation do not resemble or is not identical to one awarded by the Institute.

(3) Nothing contained in this section shall enable a University or a body to adopt a name or nomenclature which is in any way similar to that of the Institute.”.

13. For section 16 of the principal Act, the following section shall be substituted, namely:—

“16. (1) For the efficient performance of its duties, the Council shall—

(a) appoint a Secretary of the Council to perform such duties as may be prescribed;

Substitution of
new section
for section 16.

Officers and
employees,
salary,
allowances,
etc.

(b) appoint a Director (Discipline) to perform such functions as are assigned to him under this Act and the rules and regulations framed thereunder;

(2) The Council may also—

(a) appoint such other officers and employees as it considers necessary;

(b) require and take from the Secretary or from any other officer or employee such security for the due performance of his duties, as the Council considers necessary;

(c) prescribe the salaries, fees, allowances of the officers and employees and their terms and conditions of service;

(d) with the previous sanction of the Central Government, fix the allowances of the President, Vice-President and other members of the Council and members of its Committees.

(3) The Secretary of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat.”.

14. In section 17 of the principal Act,—

(a) in sub-section (1), for clause (iii), the following clause shall be substituted, namely :—

“(iii) a Finance Committee.”;

(b) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely :—

“(2) The Council may also form such other committees from amongst its members as it consider necessary for the purpose of carrying out the provisions of this Act, and any Committee so formed may, with the sanction of the Council, co-opt such other members of the Institute not exceeding one-third of the members of the committee as it thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the committee.

(3) Each of the Standing Committees shall consist of the President and the Vice-President *ex officio*, and minimum of three and maximum of five members to be elected by the Council from amongst its members.”.

15. In section 18 of the principal Act,—

(i) for sub-sections (3), (4) and (5), the following sub-sections shall be substituted, namely :—

“(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue in the manner prescribed.

(4) The Council shall prepare in the manner prescribed and approve, prior to the start of the financial year, an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expenditures for the forthcoming year.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a chartered accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Amendment
of section 17.

Amendment
of section 18.

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and actual view of its finances, then the Council may itself cause a special audit to be conducted:

Provided also that, if such information, that the accounts of the Council do not represent a true and actual view of its finances, is sent to the Council by the Central Government, then, the Council may cause a special audit and shall furnish an action taken report on it to the Central Government";

(ii) after sub-section (5), the following sub-sections shall be inserted, namely:—

"(5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

(5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and Report shall be forwarded to the Central Government and to all the members of the Institute.”.

16. In section 19 of the principal Act,—

Amendment
of section 19.

(i) in sub-section (3), the words "on payment of such amount as may be prescribed" shall be inserted at the end;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.”.

17. In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment
of section 20.

"(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council which shall not exceed rupees two thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand.”.

18. For section 21 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 21.
Disciplinary
Directorate.

"21. (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint alongwith the prescribed fee, the Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said authorities may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.”.

19. After section 21 of the principal Act the following sections shall be inserted, namely:—

‘21A. (1) The Council shall constitute a Board of Discipline consisting of—

- (a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;
- (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy;
- (c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

- (a) reprimand the member;
- (b) remove the name of the member from the Register up to a period of three months;
- (c) impose such fine as it may think fit which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no *prima-facie* case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

21B. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

Insertion of
new sections
21A, 21B,
21C and 21D.

Board of
Discipline.

Disciplinary
Committee.

(2) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: —

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

21C. For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely: —

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Authority,
Disciplinary
Committee,
Board of
Discipline and
Director
(Discipline) to
have powers
of civil court.

Explanation.—For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

21D. All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Chartered Accountants (Amendment) Act, 2005, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Chartered Accountants (Amendment) Act, 2005.‘.

Transitioonal
Provisions.

20. For section 22 of the principal Act, the following section shall be substituted, namely:—

‘22. For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.’.

Substitution of
new section
for section 22.
Professional
or other
misconduct
defined.

21. For Section 22A of the principal Act, the following sections shall be substituted, namely:—

“22A. (1) The Central Government shall, by notification, constitute an Appellate Authority consisting of—

(a) a person who is or has been a judge of a High Court, to be its Chairperson;

(b) two members to be appointed from amongst the persons who have been members of the Council for at least one full term and who is not a sitting member of the Council;

Substitution of
new sections for
section 22A.
Coastitution
of Appellate
Authority.

Term of office of Chairperson and members of Authority.

Allowances and conditions of service of Chairperson and members of Authority.

Procedure to be regulated by Authority.

Officers and other staff of Authority.

Resignation and removal of Chairperson and members.

Appeal to Authority.

(c) two members to be nominated by the Central Government from amongst persons having knowledge and practical experience in the field of law, economics, business, finance or accountancy.

(2) The Chairperson and other members shall be part-time members.

22B. (1) A person appointed as the Chairperson shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(2) A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

22C. The allowances payable to, and other terms and conditions of service of, the Chairperson and members and the manner of meeting expenditure of the Authority by the Council and such other authorities shall be such as may be specified.

22D. (1) The office of the Authority shall be at Delhi.

(2) The Authority shall regulate its own procedure.

(3) All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

22E. (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.

22F. (1) The Chairperson or a member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is earlier.

(2) The Chairperson or a member shall not be removed from his office except by an order of the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the Central Government may appoint for this purpose in which the Chairperson or a member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

22G. (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days of the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may –

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.”.

22. In section 24A of the principal Act, sub-section (3) shall be omitted. Amendment of section 24A.

23. In section 26 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 26.

“(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings, which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less ten thousand rupees but which may extend to two lakh rupees or with both.”.

24. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:— Insertion of new Chapter VIIA.

“CHAPTER VIIA QUALITY REVIEW BOARD

28A. (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and ten other members. Establishment of Quality Review Board.

(2) The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

(3) Five members of the Board shall be nominated by the Council and other five members shall be nominated by the Central Government.

28B. The Board shall perform the following functions, namely:— Functions of Board.

- (a) to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;
- (b) to review the quality of services provided by the members of the Institute including audit services; and
- (c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

28C. The Board shall meet at such time and place and follow in its meetings such procedure as may be specified. Procedure of Board.

28D. (1) The terms and conditions of service of the Chairperson and the members of the Board, and their allowances shall be such as may be specified. Terms and conditions of services of Chairperson and members of Board.

(2) The expenditure of the Board shall be borne by the Council.”. and its expenditure.

Insertion of
new section
29 A.

Power of
Central
Government
to make rules.

25. After section 29 of the principal Act, the following section shall be inserted, namely:—

“29A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of section 9;

(b) the terms and conditions of service of the Presiding Officer and Members of the tribunal, place of meetings and allowances to be paid to them under sub-section (3) of section 10B;

(c) the procedure of investigation under sub-section (4) of section 21;

(d) the procedure while considering the cases by the Disciplinary Committee under sub-section (2), and the fixation of allowances of the nominated members under sub-section (4) of section 21B;

(e) the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of meeting expenditure by the Council under section 22C;

(f) the procedure to be followed by the Board in its meetings under section 28C; and

(g) the terms and conditions of service of the Chairperson and members of the Board under sub-section (1) of section 28D.”.

Amendment
of section 30.

Substitution
of new
section for
section 30B.

Rules,
regulations
and
notifications
to be laid
before
Parliament.

26. In section 30 of the principal Act, in sub-section (1), the words “and a copy of such regulations shall be sent to each member of the Institute” shall be omitted.

27. For section 30B of the principal Act, the following section shall be substituted, namely:—

“30B. Every rule and every regulation made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not be made or issued, the rule, regulation or notification, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification.”.

28. After section 30B of the principal Act, the following sections shall be inserted, namely:—

“30C. (1) In the event of non-compliance by the Council of any provisions of this Act, the Central Government may give to the Council such general or special directions as it considers necessary to ensure compliance and the Council shall, in the discharge of its functions under this Act, comply with such directions.

Insertion of
new sections
30C, 30D and
30E.

Power of
Central
Government
to issue
directions.

(2) If, in the opinion of the Central Government, the Council has persistently made default in giving effect to the directions issued under sub-section (1), it may, after giving an opportunity of being heard to the Council, by notification, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be decided by the Central Government:

Provided that the Central Government shall ensure constitution of a new Council in accordance with the provisions of this Act within a period of one year from the date of its dissolution.

(3) Where the Central Government has issued a notification under sub-section (2) dissolving the Council, it shall, pending the constitution of a new Council in accordance with the provisions of this Act, nominate any person or body of persons not exceeding five members to manage the affairs and discharge all or any of the functions of the Council under this Act.

30D. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Authority or the Disciplinary Committee or the Tribunal or the Board or the Board of Discipline or the Disciplinary Directorate or any officer of that Government, Council, Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate, for any thing which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

Protection of action taken in good faith.

30E. The Chairperson, Presiding Officer members and other officers and employees of the Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. ”

Members, etc., to be public servants.

45 of 1860.

29. For the First Schedule and the Second Schedule to the principal Act, the following Schedules shall be substituted, namely:—

Substitution of new Schedules for First Schedule and Second Schedule.

“THE FIRST SCHEDULE
[See sections 21 (3), 21A(3) and 22]

PART I

Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he —

(1) allows any person to practice in his name as a chartered accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India;

Explanation. — In this item, “partner” includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this Part;

(3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part;

(4) enters into partnership, in or outside India, with any person other than a chartered accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (v) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;

(5) secures, either through the services of a person who is not an employee of such chartered accountant or who is not his partner or by means which are not open to a chartered accountant, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

(6) solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting—

(i) any chartered accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or

(ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council:

Provided that a member in practice may advertise through a write up, setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with;

(10) charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon

the findings, or results of such employment, except as permitted under any regulation made under this Act;

(11) engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company (not being a managing director or a wholetime director) unless he or any of his partners is interested in such company as an auditor;

(12) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, any balance-sheet, profit and loss account, report or financial statements.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person —

(1) pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him;

(2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he —

(1) not being a fellow of the Institute, acts as a fellow of the Institute;

(2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

(3) while inviting professional work from another chartered accountant or while responding to tenders or enquiries or while advertising through a write up, as provided for in items (6) and (7) of Part I of this schedule, gives information knowing it to be false.

PART IV

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he —

(1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

THE SECOND SCHEDULE

[See sections 21 (3), 21B(3) and 22]

PART I

Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he —

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;
- (2) certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice;
- (3) permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;
- (5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;
- (6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;
- (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
- (8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
- (9) fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances;
- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

- (1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;
- (2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer;
- (3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;
- (4) defalcates or embezzles moneys received in his professional capacity.

PART III

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.”

STATEMENT OF OBJECTS AND REASONS

The necessity to bring out amendments in the Chartered Accountants Act, 1949 (the CA Act) arose on account of the changes in the economic and corporate environment in the country over the years. These changes include, *inter alia*, the developments in the capital markets, their growth and dismantling of the system of economic controls. The economy also witnessed two major securities scams in 1992 and 2001, which has brought out the significance of the role of accounting professionals, in particular those associated with preparation of accounts of companies and audit of the same.

2. Moreover, changes in the CA Act were necessitated by the need to bring about systemic changes in the institutions governed by the Act, including disciplinary procedures to deal with cases of professional misconduct; to ensure quality instruction in the related disciplines and to enable institutional growth and professional development of its members.

3. The proposals to bring out amendments in the Act have been prepared on the basis of experience gained in administration of the Act, the recommendations of the Joint Parliamentary Committee, which inquired into the stock market scams and of other Committees including, the High Level Committee "on Corporate Audit and Governance" set up under the Chairmanship of Shri Naresh Chandra, which *inter alia* examined the Auditor-Company relationship and the disciplinary mechanism for the Auditors.

4. A Bill, namely the Chartered Accountants (Amendment) Bill, 2003 was introduced in the Rajya Sabha on 23.12.2003. The Bill was, thereafter referred to the Parliamentary Standing Committee on Finance, whose report was presented to Parliament in February, 2005. Taking into account the recommendations of the Committee, proposals in the Bill have been revised and the Bill is now being introduced as a fresh Bill.

5. Some of the main amendments proposed in the Bill are as follows: —

(a) provision for an institutionalised Disciplinary Mechanism within the framework of the Institute of Chartered Accountants of India, which would ensure well considered yet expeditious disposal of complaints against members of the Institute, on professional or other misconduct and ensuring faster delivery of justice. The proposals provide for appointment of a Director (Discipline), establishment of a Disciplinary Directorate to investigate complaints, constitution of a Board of Discipline to deal with the cases of minor offences, Disciplinary Committee(s) to deal with cases of major offences within the institutional framework of the Institute;

(b) providing for an Appellate Authority headed by a person, who is or has been a judge of a High Court, to deal with appeals arising from decisions of disciplinary authorities;

(c) establishment of a Quality Review Board, which would also include outside experts to review the quality of services provided by the members of the Institute including audit services;

(d) providing enhanced autonomy to the Council in the matter of fixing various fees within prescribed broad limits;

(e) provisions for bringing transparency in financial affairs of the Institute and preparation of annual financial statement (the budget) by the Council; and

(f) enabling the members of the Institute to form multi-disciplinary firms and offer multi-professional services in a competitive and commercial manner.

6. The Bill seeks to achieve the above objects.

PREM CHAND GUPTA.

Notes on clauses

Clause 2 seeks to define various expressions used in the Bill.

Clause 3 seeks to provide that the Council may determine the fee, for entry of names in the Register of the Institute, upto rupees three thousand which may be increased upto rupees six thousand with the prior approval of the Central Government.

Clause 4 seeks to provide that the Council may determine the fee of fellow members of the Institute up to rupees five thousand which may be increased upto rupees ten thousand with the prior approval of the Central Government.

Clause 5 seeks to provide that the Council may determine the annual fee for the certificate of practice upto rupees three thousand which may be increased upto rupees six thousand with the prior approval of the Central Government. This clause also contains provision which provides for cancellation of certificate of practice under such circumstances as may be prescribed.

Clause 6 seeks to provide for enhancing the strength of the Council of the Institute by making provision for elected members from twenty-four to thirty-two and for nominated members from six to eight and makes provision for the manner of election and nomination to be specified by rules. The clause also contain provision debaring persons holding post under the Central Government or the State Government; and for a certain period auditor and a fellow of the Institute, who has been found guilty of any professional or other misconduct under the First Schedule and the Second Schedule, from contesting election to the Council.

Clause 7 seeks to provide that a member of the Council shall be eligible for re-election and re-nomination for a maximum of three consecutive terms. The clause also contains provision which will debar sitting and former Presidents of the Council from contesting elections to the Council.

Clause 8 seeks to provide for settlement of election disputes and for that purpose, establishment of an election Tribunal consisting of a Presiding Officer and two Members. It also provides that the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings and allowances shall be such as may be specified.

Clause 9 also seeks to provide for the continuation in office by the Vice-President as well, on expiration of duration of the Council, till his successor takes charge.

Clause 10 seeks to provide that a member shall be deemed to have vacated his seat if he has been found guilty of professional or other misconduct and awarded penalty of fine. The clause also seeks to change the period from "six months" to "one year", for not filling up a casual vacancy occurring within this extended period of one year, prior to the date of expiration of the duration of the Council.

Clause 11 seeks to enumerate the functions of the Council and also provides that the Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of the Chartered Accountants Act, 1949 (the CA Act) shall be vested in the Council.

Clause 12 seeks to provide that any University established by law or body affiliated to the Institute, may impart education on the subjects covered by the academic courses of the Institute, and also ensure that the award of degree, diploma, etc., or designation do not resemble or is identical to one awarded by the Institute.

Clause 13 seeks to, *inter alia*, provide that the Council shall appoint a Secretary of the Council, Director (Discipline) and such other officers and employees as it considers necessary.

Clause 14 seeks to, *inter alia*, provide for constitution of a Finance Committee, increasing the strength of the Executive Committee and the Examination Committee, and reduction of strength of co-opted members in other Committees constituted by the Council from two-thirds to one-third.

Clause 15 seeks to provide that the Council shall keep accounts in the prescribed manner. It provides for preparation of annual financial statement (the budget), and the annual accounts in the prescribed manner. It also provides that the Council may circulate audited accounts to its members at least fifteen days in advance, and shall cause to be published in the Gazette of India, the audited accounts and the Report of the Council not later than 30th September of the year next following.

Clause 16 seeks to provide that the list of members of the Institute can be supplied to the members on payment of the prescribed amount. This clause also provides that the Council may determine annual membership fee, differing in amount according as he is an associate or a fellow of the Institute, upto rupees five thousand which may be increased upto rupees ten thousand with the prior approval of the Central Government.

Clause 17 seeks to provide that the Council may re-enter the name of the member of the Institute, if his name has been removed for non-payment of the requisite fee, on payment of arrears of such fees and an additional fee upto rupees two thousand as may be determined by the Council, which may be increased upto rupees four thousand with the prior approval of the Central Government.

Clauses 18 and 19 seek to provide that the Council may establish a Disciplinary Directorate headed by Director (Discipline) and constitution of Board of Discipline and Disciplinary Committee, the manner of dealing with complaints relating to professional or other misconduct and awarding penalties. While exercising their powers under the CA Act, they shall have the powers of a civil court in respect of the matters specified therein.

Clause 20 seeks to add the expression "or other misconduct" in section 22 of the CA Act, to bring it in line with the modifications proposed in the Schedules and proposes to make Director (Discipline) responsible for such matters.

Clause 21 seeks to, *inter alia*, provide for constitution of an Appellate Authority to hear appeals from the orders of the Disciplinary Committee and Board of Discipline, its composition, the terms of office of Chairperson and members, their allowances and conditions of service, including their resignation and removal. It also provides for the procedure to be adopted by the Authority.

Clause 22 seeks to omit sub-section (3) of section 24A so as to make a separate provision in section 15A of the CA Act for imparting education by Universities and other bodies.

Clause 23 seeks to increase penalties for the persons, contravening the provisions as to signing of documents, etc., not authorised to sign.

Clause 24 seeks to, *inter alia*, provide for establishment of a Quality Review Board, its functions, procedures, the terms and conditions of service of Chairperson and members, which will review the quality of audit and other services provided by the members of the Institute.

Clause 25 seeks to confer upon the Central Government the power to make rules to carry out the provisions proposed in the Bill. Sub-clause (2) of this clause enumerates the matters in respect of which such rules may be made.

Clause 26 seeks to amend section 30 of the CA Act to provide that sending of copy of regulations to each member of the Institute will no longer be a statutory requirement.

Clause 27 seeks to provide for laying of rules, regulations and notifications on the table of both the Houses of Parliament.

Clause 28 seeks to *inter alia*, empower the Central Government to issue such general or special directions, as it considers necessary in ensuring compliance of the provisions of the CA Act, to the Council, making it obligatory on part of the Council to comply with such directions. It also empowers the Central Government to dissolve the Council after giving an

opportunity of being heard. The clause also seeks to make provision for protection of action taken in good faith of certain authorities and declare members, etc., of such authorities to be public servants under section 21 of the Indian Penal Code.

Clause 29 seeks to provide for substitution of new Schedules for the existing Schedules.

FINANCIAL MEMORANDUM

The Bill seeks to appoint a Director (Discipline), establish a Disciplinary Directorate, constitute a Board of Discipline, Disciplinary Committee, an Appellate Authority, and establish a Quality Review Board. The expenditure in this regard is to be borne by the Council of the Institute and there shall be no expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3, 4, 5, 16 and 17 of the Bill seek to amend certain provisions of the Chartered Accountants Act, 1949 (the principal Act) so as to empower the Council to determine, by notification, the fee relating to entry of names in the Register, registration as fellows and associates, annual membership fee and fee for re-entry of name in Register, up to the limits provided in the Bill.

2. Clauses 5 and 6 also seek to amend section 6 of the principal Act so as to empower the Council to cancel the certificate of practice under the circumstances prescribed by regulations; and section 9 to empower the Central Government to specify by rules, the manner of election and nomination of the members to the Council.

3. Clause 8 of the Bill seeks to insert a new section 10B so as to empower the Central Government to specify by rules, the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, and allowances.

4. Clause 11 of the Bill seeks to substitute section 15 of the principal Act which deals with the functions of the Council. The Council may while carrying out the provisions of the Act, make regulations with respect to prescribing of qualifications for entry in Register, examination fees, etc.

5. Clause 13 of the Bill seeks to substitute section 16 of the principal Act to provide for making regulations relating to the duties of the Secretary of the Council, and for salaries, allowances, etc., of officers and employees.

6. Clause 15 of the Bill seeks to amend section 18 of the principal Act so as to empower the Council to prescribe by regulations, the preparation and keeping of the accounts, annual financial statement (the budget) and annual accounts of the Council.

7. Clause 16 of the Bill also seeks to amend section 19 of the principal Act to empower the Council to prescribe by regulations, the amount which a member will have to pay for a copy of the list of members of the Institute.

8. Clause 18 of the Bill seeks to substitute section 21 of the principal Act to empower the Council to prescribe by regulations, the fee to be enclosed while making a complaint on professional or other misconduct of a member; and to empower the Central Government to specify by rules, the procedure for investigation which will be followed by the Disciplinary Directorate.

9. Clause 19 of the Bill seeks to insert new section 21B, so as to empower the Central Government to specify by rules, the procedure to be followed by the Disciplinary Committee while considering the cases; and the allowances payable to the nominated members of such Committee.

10. Clause 21 of the Bill seeks to insert new sections 22C and 22E in the principal Act, so as to empower the Central Government to specify by rules, the allowances and terms and conditions of service of the Chairperson and members of the Appellate Authority, the manner of meeting expenditure of the Authority by the Council and such other Authorities.

11. Clause 24 of the Bill seeks to insert a new Chapter VII A (relating to Quality Review Board) in the principal Act so as to empower the Central Government to specify by rules the time, place and the procedure to be followed by the Board in its meetings, and the terms and conditions of service of the Chairperson and the members of the Board.

12. The matters in respect of which the said rules or regulations may be made or notifications issued are matters of procedure and administrative detail, and it is not practicable to provide for them in the proposed Bill itself.

13. The delegation of legislative power is, therefore, of a normal character.

II

BILL No. CXXII OF 2005

A Bill further to amend the Cost and Works Accountants Act, 1959.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Cost and Works Accountants (Amendment) Act, 2005.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

23 of 1959.

2. In the Cost and Works Accountants Act, 1959 (hereinafter referred to as the principal Act), in sub-section (1) of section 2,—

Amendment of section 2.

(i) after clause (a), the following clauses shall be inserted, namely:—

(aa) "Authority" means the Appellate Authority referred to in section 22A;

(aaa) "Board" means the Quality Review Board constituted under section 29A;';

(ii) after clause (f), the following clause shall be inserted, namely:—

'(fa) "notification" means a notification published in the Official Gazette;';

(iii) after clause (i), the following clauses shall be inserted, namely:—

'(ia) "specified" means specified by rules made by the Central Government under this Act;

'(ib) "Tribunal" means a Tribunal established under sub-section (1) of section 10B;'.

Amendment of section 4. 3. In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv) and (v) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.”.

Amendment of section 5. 4. In section 5 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) A member, being an associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a cost accountant shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand, and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.

Explanation I. — For the purposes of this sub-section, a person shall be deemed to have practiced in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practice during that period.

Explanation II. — In computing the continuous period during which a person has been an associate of the Institute, there shall be included any continuous period during which the person has been an associate of the dissolved company immediately before he became an associate of the Institute.”.

Amendment of section 6. 5. In section 6 of the principal Act,—

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Every such member shall make an application in such form, and pay such annual fee, for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand:

Provided further that if a member of the Institute, who was in practice immediately before the commencement of this Act, has made within one month of such commencement an application for the grant of certificate of practice, he shall not be deemed to have contravened the provisions of sub-section (1) by reason of his having practised during the period between such commencement and the disposal of the application.”;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.”.

6. In section 9 of the principal Act,—

Amendment of
section 9.

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Council shall be composed of the following persons, namely:—

(a) not more than fifteen persons elected by the members of the Institute, from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a fellow of the Institute, who has been found guilty of any professional or other misconduct, and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,—

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than five persons nominated in the specified manner by the Central Government.”;

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) No person holding a post under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2) for a period of three years after he ceases to be an auditor.”.

7. For section 10 of the principal Act, the following section shall be substituted, namely:—

“10. A member of the Council, elected or nominated under sub-section (2) of section 9, shall be eligible for re-election or as the case may be, re-nomination:

Provided that no member shall hold the office for more than two consecutive terms:

Provided further that a member of the Council, who is or has been elected as President under sub-section (1) of section 12, shall not be eligible for election or nomination as a member of the Council.”.

Substitution of
new section for
section 10.
Re-election or
re-nomination
to Council.

Insertion of new sections 10A and 10B.

Settlement of disputes regarding election.

Establishment of Tribunal.

Amendment of section 12.

Amendment of section 13.

Amendment of section 14.

Substitution of new section for section 15.

Functions of Council.

8. After section 10 of the principal Act, the following sections shall be inserted, namely:—

“10A. In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of declaration of the result of election to the Secretary of the Institute, who shall forward the same to the Central Government.

10B. (1) On receipt of any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

(2) A person shall not be qualified for appointment,—

(a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term, and who is not a sitting member of the Council or who has not been a candidate in the election under dispute; or

(c) as a Member unless he holds the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the Council.”.

9. In section 12 of the principal Act,—

(i) in sub-section (2), for the words “Chief Executive Authority”, the word “Head” shall be substituted;

(ii) in sub-section (3),—

(a) after the words “he shall be eligible for re-election”, the words, brackets and figure “under sub-section (1)” shall be inserted;

(b) in the proviso, for the words “the President”, the words “the President and the Vice-President” shall be substituted.

10. In section 13 of the principal Act,—

(i) in sub-section (2), after the words “meetings of the Council”, the words “or he has been found guilty of any professional or other misconduct and awarded penalty of fine,” shall be inserted;

(ii) in the proviso to sub-section (3), for the words “six months”, the words “one year” shall be substituted.

11. In section 14 of the principal Act, in sub-section (1), for the words “three years”, the words “four years” shall be substituted.

12. For section 15 of the principal Act, the following section shall be substituted, namely:—

“15. (1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include —

- (a) to approve academic courses and their contents;
- (b) the prescribing of fees for the examination of candidates for enrolment;
- (c) the prescribing of qualifications for entry in the Register;
- (d) the recognition of foreign qualifications and training for the purposes of enrolment;
- (e) the prescribing of guidelines for granting or refusal of certificates of practice under this Act;
- (f) the levy of fees from members, examinees and other persons;
- (g) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (h) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;
- (i) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;
- (j) to enable functioning of the Quality Review Board;
- (k) consideration of the recommendations of the Quality Review Board made under clause (a) of section 29B, action taken thereon with a report to the Central Government within a period of three months and their inclusion in the annual report; and
- (l) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time."

13. After section 15 of the principal Act, the following sections shall be inserted, namely:—

"15A. The functions of the Institute shall include—

- (a) the examination of candidates for enrolment;
- (b) the regulation of training of students;
- (c) the maintenance and publication of a Register of persons qualified to practice as Cost Accountants;
- (d) collection of fees from members, examinees and other persons;
- (e) subject to the orders of the appropriate authorities under this Act, the removal of names from the Register and the restoration to the Register of names which have been removed;
- (f) the maintenance of a library and publication of books and periodicals relating to accountancy and allied subjects;
- (g) the conduct of elections to the Council of the Institute; and
- (h) the granting or refusal of certificates of practice as per guidelines issued by the Council.

15B. (1) Subject to the provisions of this Act, any University established by law or any body affiliated to the Institute, may impart education on the subjects covered by the academic courses of the Institute.

Insertion of
new sections
15A and 15B.

Functions of
Institute.

Imparting
education by
Universities
and other
bodies.

(2) The Universities or bodies referred to in sub-section (1) shall, while awarding degree, diploma or certificate or bestowing any designation, ensure that the award or designation do not resemble or is not identical to one awarded by the Institute.

(3) Nothing contained in this section shall enable a University or a body to adopt a name or nomenclature which is in any way similar to that of the Institute.”.

14. For section 16 of the principal Act, the following section shall be substituted, namely:—

“16. (1) For the efficient performance of its duties, the Council shall —

(a) appoint a Secretary of the Council to perform such duties as may be prescribed;

(b) appoint a Director (Discipline) to perform such functions as assigned to him under this Act and the rules and regulations framed thereunder;

(c) designate an officer of the Council or the Institute to carry out the administrative functions of the Institute as its chief executive.

(2) The Council may also —

(a) appoint such other officers and employees to the Council and the Institute as it considers necessary;

(b) require and take from the Secretary or from any other officer or employee of the Council and the Institute such security for the due performance of his duties, as the Council considers necessary;

(c) prescribe the salaries, fees, allowances of the officers and employees of the Council and the Institute and their terms and conditions of service;

(d) with the previous sanction of the Central Government, fix the allowances of the President, Vice-President and other members of the Council and members of its Committees.

(3) The Secretary of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat.”.

15. In section 17 of the principal Act,—

(a) in sub-section (1), for clause (ii), the following clause shall be substituted, namely:—

“(ii) a Finance Committee; and”;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Each of the Standing Committees shall consist of the President and the Vice-President *ex officio*, and minimum of three and maximum of five members to be elected by the Council from amongst its members.”;

(c) sub-sections (4) and (5) shall be omitted;

(d) in sub-section (6), for the words “two-thirds of total membership of the Committee”, the words “one-third of total membership of the Committee” shall be substituted.

16. In section 18 of the principal Act,—

(i) for sub-sections (3), (4) and (5), the following sub-sections shall be substituted, namely:—

“(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue in the manner prescribed.

Substitution of new section for section 16.

Officers and employees, salary, allowances, etc.

Amendment of section 17.

Amendment of section 18.

(4) The Council shall prepare in the manner prescribed and approve, prior to the start of the financial year, an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expenditures for the forthcoming year.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a chartered accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and actual view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that if such information, that the accounts of the Council do not represent a true and actual view of its finances, is sent to the Council by the Central Government, then, the Council may cause a special audit and shall furnish an action taken report on it to the Central Government.;

(ii) after sub-section (5), the following sub-sections shall be inserted, namely:—

“(5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

“(5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and Report shall be forwarded to the Central Government and to all the members of the Institute.”.

17. In section 19 of the principal Act,—

Amendment
of section 19.

(i) in sub-section (3), the words “on payment of such amount as may be prescribed” shall be inserted at the end;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand which shall not in any case exceed rupees ten thousand.”.

18. In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment
of section 20.

“(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council which shall not exceed rupees two thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand which shall not in any case exceed rupees four thousand.”.

Substitution of new section for section 21.

Disciplinary Directorate.

19. For section 21 of the principal Act, the following section shall be substituted, namely:—

“21. (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board of Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.”.

20. After section 21 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 21A, 21B, 21C and 21D.

Board of Discipline.

‘21A. (1) The Council shall constitute a Board of Discipline consisting of—

(a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of section 16;

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may think fit which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no *prima facie* case

and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

21B. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Disciplinary Committee.

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee while considering the cases placed before it, shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

21C. For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

Authority,
Disciplinary
Committee,
Board of
Discipline and
Director
(Discipline) to
have powers
of civil court.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Explanation.—For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

21 D. All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Cost and Works Accountants (Amendment) Act, 2005 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Cost and Works Accountants (Amendment) Act, 2005.‘.

Transitional
provisions.

21. For section 22 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section 22.

22. For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules but nothing in this section shall be construed to limit or abridge in any way

Professional or
other mis-
conduct
defined.

Insertion of
new sections
22A, 22B,
22C, 22D and
22E.

Constitution
of Appellate
Authority.

Term of office
of members of
Authority.

Procedure, etc
of Authority.

Officers and
other staff of
Authority.

Appeal to
Authority.

the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.'.

22. After section 22 of the principal Act, the following sections shall be inserted, namely:—

'22A. The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely:—

38 of 1949.

"(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Cost and Works Accountants of India for at least one full term and who is not a sitting member of the Council;".

22B. A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

22C. The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949 shall apply to the Authority in relation to allowances and terms and conditions of service of its Chairperson and members and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.

38 of 1949.

22D. (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.

22E. (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

(c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

(d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.'

23. In section 25 of the principal Act, sub-section (3) shall be omitted.

Amendment of section 25.

24. In section 27 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 27.

"(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with a fine not less than ten thousand rupees but which may extend to two lakh rupees or with both."

25. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of new Chapter VIIA.

"CHAPTER VIIA
QUALITY REVIEW BOARD

29A. (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and four other members.

Establishment of Quality Review Board.

(2) The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

(3) Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

29B. The Board shall perform the following functions, namely:—

Functions of Board.

(a) to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;

(b) to review the quality of services provided by the members of the Institute including cost audit services; and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

29C. The Board shall meet at such time and place and follow in its meetings such procedure as may be specified.

Procedure of Board.

29D. (1) The terms and conditions of service of the Chairperson and the members of the Board, and their allowances shall be such as may be specified.

Terms and conditions of service of Chairperson and members of Board and its expenditure.

(2) The expenditure of the Board shall be borne by the Council."

*

26. Section 33 of the principal Act shall be omitted.

Omission of section 33.

27. For section 36 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 36.

"36. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Authority or the Disciplinary Committee or the Tribunal or the Board or the Board of Discipline or the Disciplinary Directorate or any officer of that Government, Council, Authority, Disciplinary Committee, Tribunal, Board,

Protection of action taken in good faith.

Insertion of
new section
36A.

Members, etc.
to be public
servants.

Insertion of
new section
38A.

Power of
Central
Government
to make rules.

Amendment
of section 39.

Insertion of
new section 40.

Rules,
regulations and
notifications to
be laid before
Parliament.

Board of Discipline or the Disciplinary Directorate, for anything which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.”.

28. After section 36 of the principal Act, the following section shall be inserted, namely:—

“36A. The Chairperson, Presiding Officer, members and other officers and employees of the Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.”.

45 of 1860.

29. After section 38 of the principal Act, the following section shall be inserted, namely:—

“38A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of section 9;

(b) the terms and conditions of service of the Presiding Officer and Members of the Tribunal, place of meetings and allowances to be paid to them under sub-section (3) of section 10B;

(c) the procedure of investigation under sub-section (4) of section 21;

(d) the procedure while considering the cases by the Disciplinary Committee under sub-section (2) and fixation of allowances of the nominated members under sub-section (4) of section 21B;

(e) the procedure to be followed by the Board in its meetings under section 29C; and

(f) the terms and conditions of service of the Chairperson and members of the Board under sub-section (1) of section 29D.”.

30. In section 39 of the principal Act,—

(i) in sub-section (1), the words “and a copy of such regulations shall be sent to each member of the Institute” shall be omitted;

(ii) sub-section (5) shall be omitted.

31. After section 39 of the principal Act, the following section shall be inserted, namely:—

“40. Every rule and every regulation made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not be made or issued, the rule, regulation or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such

modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification.”.

32. For the First Schedule and the Second Schedule to the principal Act, the following Schedules shall be substituted, namely:—

Substitution of new Schedules for First Schedule and Second Schedule.

“THE FIRST SCHEDULE

[See sections 21 (3), 21A(3) and 22]

PART I

Professional misconduct in relation to cost accountants in practice

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any person to practice in his name as a cost accountant unless such person is also a cost accountant in practice and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation. — In this item, “partner” includes a person residing outside India with whom a cost accountant in practice has entered into partnership which is not in contravention of item (iv) of this Part;

(3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share, commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part;

(4) enters into partnership, in or outside India, with any person other than a cost accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (iv) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;

(5) secures, either through the services of a person who is not an employee of such cost accountant or who is not his partner or by means which are not open to a cost accountant, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting—

(i) any cost accountant from applying or requesting for or inviting or securing professional work from another cost accountant in practice;

(ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than cost accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Cost Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council:

Provided that a member in practice may advertise through a write up, setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

(8) accepts a position as cost accountant previously held by another cost accountant in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except as permitted under any regulation made under this Act;

(10) engages in any business or occupation other than the profession of cost accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a cost accountant from being a director of a company (not being a managing director or a wholotime director) unless he or any of his partners is interested in such company as accountant;

(11) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, any cost or pricing statements or any other statements relating thereto.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person—

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;

(2) accepts or agrees to accept any part of fees, profit or gains from a lawyer, a cost accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) not being a fellow of the Institute acts as a fellow of the Institute;

(2) does not supply the information called for, or does not comply with the requirements asked for by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

(3) while inviting professional work from another cost accountant or while responding to tenders or enquiries or while advertising through a write up, as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if—

(1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

(2) in the opinion of the Council he brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

THE SECOND SCHEDULE

[See sections 21 (3), 21B (3) and 22]

PART I

Professional misconduct in relation to cost accountants in practice

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name, or in the name of his firm, a report of an examination of cost accounting and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another cost accountant in practice;

(3) permits his name or the name of his firm to be used in connection with an estimate of cost or earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expresses his opinion on cost or pricing statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest;

(5) fails to disclose a material fact known to him in a cost or pricing statement, which is not disclosed in a cost or pricing statement but disclosure of which is necessary in making such statement where he is concerned with such statement in a professional capacity;

(6) fails to report a material mis-statement known to him to appear in a cost or pricing statement with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure of costing and pricing applicable to the circumstances;

(10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he —

- (1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;
- (2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;
- (3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;
- (4) defalcates or embezzles moneys received in his professional capacity.

PART III

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.'

STATEMENT OF OBJECTS AND REASONS

The necessity to bring out amendments in the Cost and Works Accountants Act, 1959 (the CWA Act) arose on account of the changes in the economic and corporate environment in the country over the years. These changes include, *inter alia*, the developments in the capital markets, their growth and dismantling of the system of economic controls and the need to provide for professionals that would enable the corporate sector to assess and analyse costs in a competitive environment and provide inputs to the regulators and the Central Government as and when required.

2. Moreover, changes in the CWA Act were necessitated by the need to bring about systemic changes in the institutions governed by the Act, including disciplinary procedures to deal with cases of professional misconduct; to ensure quality instruction in the related disciplines and to enable institutional growth and professional development of its members.

3. The proposals to bring out amendments in the CWA Act have been prepared on the basis of experience gained in administration of the Act, the recommendations of the High Level Committee "on Corporate Audit and Governance" set up under the Chairmanship of Shri Naresh Chandra and other inputs on the subject made available to the Central Government from time to time.

4. A Bill, namely the Cost and Works Accountants (Amendment) Bill, 2003 was introduced in the Rajya Sabha on 23-12-2003. The Bill was, thereafter referred to the Parliamentary Standing Committee on Finance, whose report was presented to Parliament in February, 2005. Taking into account the recommendations of the Committee, proposals in the Bill have been revised and the Bill is now being introduced as a fresh Bill.

5. Some of the main amendments proposed in the Bill are as follows:—

(a) provision for an institutionalised Disciplinary Mechanism within the framework of the Institute of Cost and Works Accountants of India, which would ensure well considered yet expeditious disposal of complaints against members of the Institute, on professional or other misconduct and ensuring faster delivery of justice. The proposals provide for appointment of a Director (Discipline), establishment of a Disciplinary Directorate to investigate complaints, constitution of a Board of Discipline to deal with the cases of minor offences, Disciplinary Committee to deal with cases of major offences with the institutional framework of the Institute;

(b) providing for an Appellate Authority headed by a person, who is or has been a judge of a High Court, to deal with appeals arising from decisions of disciplinary authorities;

(c) establishment of a Quality Review Board, which would also include outside experts to review the quality of services provided by the members of the Institute;

(d) providing enhanced autonomy to the Council in the matter of fixing various fees within prescribed broadlimits;

(e) provisions for bringing transparency in financial affairs of the Institute and preparation of annual financial statement (the budget) by the Council; and

(f) enabling the members of the Institute to form multi-disciplinary firms and offer multi-professional services in a competitive and commercial manner.

6. The Bill seeks to achieve the above objects.

PREM CHAND GUPTA.

Notes on clauses

Clause 2 seeks to define various expressions used in the Bill.

Clause 3 seeks to provide that the Council may determine the fee, for entry of names in the Register of the Institute, up to rupees three thousand which may be increased up to rupees six thousand with the prior approval of the Central Government.

Clause 4 seeks to provide that the Council may determine the fee of fellow members of the Institute up to rupees five thousand which may be increased up to rupees ten thousand with the prior approval of the Central Government.

Clause 5 seeks to provide that the Council may determine the annual fee for the certificate of practice up to rupees three thousand which may be increased up to rupees six thousand with the prior approval of the Central Government. This clause also contains provision which provides for cancellation of certificate of practice under such circumstances as may be prescribed.

Clause 6 seeks to provide for enhancing the strength of the Council of the Institute by making provision for elected members from twelve to fifteen and for nominated members from four to five and makes provision for the manner of election and nomination to be specified by rules. The clause also contains provision debarring persons holding post under the Central Government or the State Government; and for a certain period auditor and a fellow of the Institute, who has been found guilty of any professional or other misconduct under the First Schedule and the Second Schedule, from contesting election to the Council.

Clause 7 seeks to provide that a member of the Council shall be eligible for re-election and re-nomination for a maximum of two consecutive terms. The clause also contains provision which will debar sitting and former Presidents of the Council from contesting elections to the Council.

Clause 8 seeks to provide for settlement of election disputes and for that purpose, establishment of an election Tribunal consisting of a Presiding Officer and two members. It also provides that the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meeting and allowances shall be such as may be specified.

Clause 9 seeks to provide that the President shall be head of the Council and also provide for the continuation in office by the Vice-President as well, on expiration of duration of the Council, till his successor takes charge.

Clause 10 seeks to provide that a member shall be deemed to have vacated his seat if he has been found guilty of professional or other misconduct and awarded penalty of fine. The clause also seeks to change the period from "six months" to "one year" for not filling up a causal vacancy occurring within this extended period of one year, prior to the date of expiration of the duration of the Council.

Clause 11 seeks to provide for enhancement of duration of the Council from three to four years.

Clause 12 seeks to enumerate the functions of the Council and also provides that the Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provision of the Cost and Works Accountants Act, 1959 (the CWA Act) shall be vested in the Council.

Clause 13 seeks to enumerate the functions of the Institute. It also provides that any University established by law or body affiliated to the Institute, may impart education on the subjects covered by the academic courses of the Institute, and also ensure that the award of degree, diploma, etc., or designation do not resemble or is identical to one awarded by the Institute.

Clause 14 seeks to, *inter alia*, provide that the Council shall appoint a Secretary of the Council, Director (Discipline), designate an officer as chief executive to carry out administrative functions and appoint such other officers and employees as it considers necessary.

Clause 15 seeks to, *inter alia*, provide for constitution of a Finance Committee, increasing the strength of the Executive Committee and the Examination Committee, and reduction of strength of co-opted members in other Committees constituted by the Council from two-thirds to one-third.

Clause 16 seeks to provide that the Council shall keep accounts in the prescribed manner. It provides for preparation of annual financial statement (the budget), and the annual accounts in the prescribed manner. It also provides that the Council may circulate audited accounts to its members at least fifteen days in advance, and shall cause to be published in the Gazette of India, the audited accounts and the Report of the Council not later than 30th September of the year next following.

Clause 17 seeks to provide that the list of members of the Institute can be supplied to the members on payment of the prescribed amount. This clause also provides that the Council may determine annual membership fee, differing in amounts according as he is an associate or a fellow of the Institute, up to rupees five thousand which may be increased up to rupees ten thousand with the prior approval of the Central Government.

Clause 18 seeks to provide that the Council may re-enter the name of the member of the Institute, if his name has been removed for non-payment of the requisite fee, on payment of arrears of such fees and an additional fee up to rupees two thousand as may be determined by the Council, which may be increased up to rupees four thousand with the prior approval of the Central Government.

Clause 19 and *20* seek to provide that the Council may establish a Disciplinary Directorate headed by Director (Discipline) and constitution of Board of Discipline and Disciplinary Committee, the manner of dealing with complaints relating to professional or other misconduct and awarding penalties. While exercising their powers under the CWA Act, they shall have the powers of a civil court in respect of the matters specified therein.

Clause 21 seeks to add the expression "or other misconduct" in section 22 of the CWA Act, to bring it in line with the modifications proposed in the Schedules and proposes to make Director (Discipline) responsible for such matters.

Clause 22 seeks to *inter alia*, provide that the Appellate Authority constituted under the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority under Cost and Works Act 1959, Accountants to hear appeals from the orders of the Disciplinary Committee and Board of Discipline, constituted under it.

Clause 23 seeks to omit sub-section (3) of section 25 so as to make a separate provision in section 15B of the CWA Act for imparting education by Universities and other bodies.

Clause 24 seeks to increase penalties for the persons, contravening the provisions as to signing of documents, etc., not authorised to sign.

Clause 25 seeks to *inter alia*, provide for establishment of a Quality Review Board, its functions, procedures, the terms and conditions of service of Chairperson and members, which will review the quality of audit and other services provided by the members of the Institute.

Clause 26 seeks to omit section 33 of the principal Act.

Clause 27 seeks to make provision for protection of action taken in good faith.

Clause 28 seeks to declare members, etc., to be public servants under section 21 of the Indian Penal Code.

Clause 29 seeks to confer upon the Central Government the power to make rules to carry out the provision proposed in the Bill. Sub-clause (2) of this clause enumerates the matters in respect of which such rules may be made.

Clause 30 seeks to amend section 39 of the CWA Act to provide that sending of copy of regulations to each member of the Institute will no longer be a statutory requirement.

Clause 31 seeks to provide for laying of rules, regulations and notifications on the table of both the Houses of Parliament.

Clause 32. seeks to provide for substitution of new Schedules for the existing Schedules.

FINANCIAL MEMORANDUM

The Bill seeks to appoint a Director (Discipline), establish a Disciplinary Directorate, constitute a Board of Discipline, Disciplinary Committee, an Appellate Authority, and establish a Quality Review Board. The expenditure in this regard is to be borne by the Council of the Institute and there shall be no expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3,4,5,17 and 18 of the Bill seek to amend certain provisions of the Cost and Works Accountants Act, 1959 (the principal Act) so as to empower the Council to determine the fee, by notification, relating to entry of names in the Register, registration as Fellows and Associates, annual membership fee and fee for re-entry of name in the Register, up to the limits provided in the Bill.

2. Clauses 5 and 6 also seek to amend section 6 of the principal Act so as to empower the Council to cancel the certificate of practice under the circumstances prescribed by regulations; and section 9 to empower the Central Government to specify by rules, the manner of election and nomination of the members to the Council.

3. Clause 8 of the Bill seeks to insert a new section 10B so as to empower the Central Government to specify the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, and allowances.

4. Clause 12 of the Bill seeks to substitute section 15 of the principal Act which deals with the functions of the Council. The Council may while carrying out the provisions of the Act, make regulations with respect to prescribing of qualifications for entry in Register, examination, fee, etc.

5. Clause 14 of the Bill seeks to substitute section 16 of the principal Act to provide for making regulations relating to the duties of the Secretary of the Council, and for salaries, allowances, etc., of officers and employees.

6. Clause 16 of the Bill seeks to amend section 18 of the principal Act so as to empower the Council to prescribe by regulations, the preparation and keeping of the accounts, annual financial statement (the budget) and annual accounts of the Council.

7. Clause 17 of the Bill also seeks to amend section 19 of the principal Act to empower the Council to prescribe by regulations, the amount which a member will have to pay for a copy of the list of members of the Institute.

8. Clause 19 of the Bill seeks to substitute section 21 of the principal Act to empower the Council to prescribe by regulations, the fee to be enclosed while making a complaint on professional or other misconduct of a member; and to empower the Central Government to specify by rules, the procedure for investigation which will be followed by the Disciplinary Directorate.

9. Clause 20 of the Bill seeks to insert new section 21B, so as to empower the Central Government to specify, the procedure to be followed by the Disciplinary Committee while considering the cases; and the allowances payable to the nominated members of such Committee.

10. Clause 22 of the Bill seeks to extends certain provisions of the Chartered Accountants Act, 1949 (38 of 1949) relating to Appellate Authority, which shall also be the Appellate Authority for the purposes of the Cost and Works Accountants Act. It further makes enabling provision for the salaries, allowances and other conditions of services of officers and other staff members of the Authority.

11. Clause 25 of the Bill seeks to insert a new Chapter VII A (relating to Quality Review Board) in the principal Act so as to empower the Central Government to specify by rules the time, place and procedure to be followed by the Board in its meetings and the terms and conditions of service of the Chairperson and the members of the Board.

12. The matters in respect of which the said rules or regulations may be made or notifications issued are matters of procedure and administrative detail, and it is not practicable to provide for them in the proposed Bill itself.

13. The delegation of legislative power is, therefore, of a normal character.

III**BILL NO. CXXIII OF 2005**

A Bill further to amend the Company Secretaries Act, 1980.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Company Secretaries (Amendment) Act, 2005.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

Amendment of
section 2.

2. In the Company Secretaries Act, 1980 (hereinafter referred to as the principal Act), in 56 of 1980.
sub-section (1) of section 2,—

(i) after clause (a), the following clauses shall be inserted, namely:—

‘(aa) “Authority” means the Appellate Authority referred to in section 22A;

‘(aaa) “Board” means the Quality Review Board constituted under section 29A;’;

(ii) after clause (g), the following clause shall be inserted, namely:—

‘(ga) “notification” means a notification published in the Official Gazette;’;

(iii) after clause (j), the following clauses shall be inserted, namely:—

‘(ja) “specified” means specified by rules made by the Central Government under this Act;

‘(jb) “Tribunal” means a Tribunal established under sub-section (1) of section 10B;’.

3. In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Every person belonging to any of the classes mentioned in clauses (c), (d) and (e) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.”.

4. In section 5 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand, and on application made and granted in the prescribed manner, be entered in the Register as a Fellow:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.

Explanation I.—For the purposes of this sub-section, a person shall be deemed to have practised in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practise during that period.

Explanation II.—In computing the continuous period during which a person has been an Associate of the Institute, there shall be included any continuous period during which the person has been an Associate of the dissolved company immediately before he became an Associate of the Institute.”.

5. In section 6 of the principal Act,—

Amendment of section 6.

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) A member who desires to be entitled to practise shall make an application in such form and pay such annual fee, for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.”;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.”.

6. In section 9 of the principal Act,—

Amendment of section 9.

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Council shall be composed of the following persons, namely:—

(a) not more than fifteen persons elected by the members of the Institute, from amongst the Fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a Fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,—

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than five persons nominated in the specified manner by the Central Government.”;

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) No person holding a post under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2) for a period of three years after he ceases to be an auditor.”.

7. For section 10 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 10.

“10. A member of the Council, elected or nominated under sub-section (2) of section 9, shall be eligible for re-election or, as the case may be, re-nomination:

Provided that no member shall hold the office for more than two consecutive terms:

Re-election or re-nomination to Council.

Insertion of
new sections
10A and 10B.

Settlement of
disputes regard-
ing election.

Establishment
of Tribunal.

Amendment of
section 12.

Amendment of
section 13.

Amendment of
section 14.

Provided further that a member of the Council, who is or has been elected as President under sub-section (1) of section 12, shall not be eligible for election or nomination as a member of the Council.”.

8. After section 10 of the principal Act, the following sections shall be inserted, namely:—

“10A. In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of declaration of the result of election to the Secretary of the Institute, who shall forward the same to the Central Government.

10B. (1) On receipt of any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

(2) A person shall not be qualified for appointment,—

(a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term and who is not a sitting member of the Council or who has not been a candidate in the election under dispute; or

(c) as a Member unless he holds the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the Council.”.

9. In section 12 of the principal Act,—

(i) in sub-section (2), for the words “Chief Executive Authority”, the word “Head” shall be substituted;

(ii) in sub-section (3), after the words “he shall be eligible for re-election”, the words, brackets and figure “under sub-section (1)” shall be inserted;

(iii) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) On the expiration of the duration of the Council, or of the term of office of the President and the Vice-President thereof, the President and the Vice-President shall continue to hold office until such time as a new President and the Vice-President is elected and takes over charge of their duties.”.

10. In section 13 of the principal Act,—

(i) in sub-section (2), after the words “meetings of the Council”, the words “or he has been found guilty of any professional or other misconduct and awarded penalty of fine,” shall be inserted;

(ii) in the proviso to sub-section (3), for the words “six months”, the words “one year” shall be substituted.

11. In section 14 of the principal Act, in sub-section (1), for the words “three years”, the words “four years” shall be substituted.

12. For section 15 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 15.

“15. (1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include—

(a) to approve academic courses and their contents;

(b) the prescribing of fees for the examination of candidates for enrolment;

(c) the prescribing of qualifications for entry in the Register;

(d) the recognition of foreign qualifications and training for purposes of enrolment;

(e) the prescribing of guidelines for granting or refusal of certificates of practice under this Act;

(f) the levy of fees from members, examinees and other persons;

(g) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(h) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in such matters of interest to Company Secretaries as may be prescribed;

(i) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;

(j) to enable functioning of the Quality Review Board;

(k) consideration of the recommendations of the Quality Review Board made under clause (a) of section 29B and details of action taken thereon in its annual report; and

(l) to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time.”.

13. After section 15 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 15A and 15B.

“15A. The functions of the Institute shall include—

Functions of Institute.

(a) the examination of candidates for enrolment;

(b) the regulation of training of students;

(c) the maintenance and publication of a Register of persons qualified to practice as Company Secretaries;

(d) collection of fees from members, examinees and other persons;

(e) subject to the orders of the appropriate authorities under this Act, the removal of names from the Register and the restoration to the Register of names which have been removed;

(f) the maintenance of a library and publication of books and periodicals relating to management of companies and allied subjects;

Imparting education by Universities and other bodies.

Substitution of new section for section 16.

Officers and employees, salary, allowances, etc.

Amendment of section 17.

(g) the conduct of elections to the Council of the Institute; and

(h) the granting or refusal of certificates of practice as per guidelines issued by the Council.

15B. (1) Subject to the provisions of this Act, any University established by law or any body affiliated to the Institute, may impart education on the subjects covered by the academic courses of the Institute.

(2) The Universities or bodies referred to in sub-section (1) shall, while awarding degree, diploma or certificate or bestowing any designation, ensure that the award or designation do not resemble or is not identical to one awarded by the Institute.

(3) Nothing contained in this section shall enable a University or a body to adopt a name or nomenclature which is in any way similar to that of the Institute.”.

14. For section 16 of the principal Act, the following section shall be substituted, namely:—

“16. (1) For the efficient performance of its duties, the Council shall—

(a) appoint a Secretary of the Council to perform such duties as may be prescribed;

(b) appoint a Director (Discipline) to perform such functions as assigned to him under this Act and the rules and regulations framed thereunder;

(c) designate an officer of the Council or the Institute to carry out the administrative functions of the Institute as its chief executive.

(2) The Council may also—

(a) appoint such other officers and employees to the Council and the Institute as it considers necessary;

(b) require and take from the Secretary or from any other officer or employee of the Council and the Institute such security for the due performance of his duties, as the Council considers necessary;

(c) prescribe the salaries, fees, allowances of the officers and employees of the Council and the Institute and their terms and conditions of service;

(d) with the previous sanction of the Central Government, fix the allowances of the President, Vice-President and other members of the Council and members of its Committees;

(3) The Secretary of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat.”.

15. In section 17 of the principal Act,—

(a) in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

“(b) a Finance Committee; and”;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Each of the Standing Committees shall consist of the President and the Vice-President *ex officio*, and minimum of three and maximum of five members to be elected by the Council from amongst its members.”;

(c) sub-sections (4) and (5) shall be omitted;

(d) in sub-section (6), for the words "two-thirds of the total membership of the Committee", the words "one-third of the total membership of the Committee" shall be substituted.

16. In section 18 of the principal Act,—

(i) for sub-sections (3), (4) and (5), the following sub-sections shall be substituted, namely:—

"(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue in the manner prescribed.

(4) The Council shall prepare in the manner prescribed and approve, prior to the start of the financial year, an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expenditures for the forthcoming year.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a Chartered Accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and actual view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that if such information, that the accounts of the Council do not represent a true and actual view of its finances, is sent to the Council by the Central Government, then, the Council may cause a special audit and shall furnish an action taken report on it to the Central Government.";

(ii) after sub-section (5), the following sub-sections shall be inserted, namely:—

"(5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

(5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and Report shall be forwarded to the Central Government and to all the members of the Institute.".

17. In section 19 of the principal Act,—

(i) in sub-section (3), the words "on payment of such amount as may be prescribed" shall be inserted at the end;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand which shall not in any case exceed rupees ten thousand.".

Amendment
of section 18.

Amendment of
section 19.

Amendment of
section 20.

18. In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council, which shall not exceed rupees two thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand.”.

Substitution of
new section
for section 21.

19. For section 21 of the principal Act, the following section shall be substituted, namely:—

Disciplinary
Directorate.

“21. (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint alongwith the prescribed fee, the Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said authorities may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.”.

Insertion of
new sections
21A, 21B,
21C and 21D.

Board of
Discipline.

20. After section 21 of the principal Act, the following sections shall be inserted, namely:—

‘21A. (1) The Council shall constitute a Board of Discipline consisting of—

(a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of section 16;

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may think fit which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no *prima facie* case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

21B. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

21C. For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Authority,
Disciplinary
Committee,
Board of
Discipline and
Director
(Discipline) to
have powers
of civil court.

Explanation.—For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

21D. All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Company Secretaries (Amendment) Act, 2005 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Company Secretaries (Amendment) Act, 2005.

Transitional
provisions.

Substitution of new section for section 22.

21. For section 22 of the principal Act, the following section shall be substituted, namely:—

Professional or other misconduct defined.

‘22. For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.’.

Insertion of new sections 22A, 22B, 22C, 22D and 22E.

22. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Constitution of Appellate Authority.

‘22A. The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely:—

38 of 1949.

(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council;’.

Term of office of members of Authority.

22B. A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

Procedure, etc., of Authority.

22C. The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949 shall apply to the Authority in relation to allowances and terms and conditions of service of its Chairperson and members, and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.

38 of 1949.

Officers and other staff of Authority.

22D. (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.

Appeal to Authority.

22E. (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may—

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.'

23. In section 25 of the principal Act, sub-section (3) shall be omitted.

Amendment of section 25.

24. In section 27 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 27.

"(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with a fine not less than ten thousand rupees but which may extend to two lakh rupees or with both."

25. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of new Chapter VIIA.

"CHAPTER VIIA

QUALITY REVIEW BOARD

29A. (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and four other members.

Establishment of Quality Review Board.

(2) The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

(3) Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

29B. The Board shall perform the following functions, namely:—

Functions of Board.

(a) to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;

(b) to review the quality of services provided by the members of the Institute including secretarial services; and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

29C. The Board shall meet at such time and place and follow in its meetings such procedure as may be specified.

Procedure of Board.

29D. (1) The terms and conditions of service of the Chairperson and the members of the Board, and their allowances shall be such as may be specified.

(2) The expenditure of the Board shall be borne by the Council".

Terms and conditions of service of Chairperson and members of Board and its expenditure.

Omission of section 30.

Substitution of new section for section 36.

Protection of action taken in good faith.

Insertion of new section 36A.

Members, etc. to be public servants.

Insertion of new section 38A.

Power of Central Government to make rules.

Amendment of section 39.

Insertion of new section 40.

Rules, regulations and notifications to be laid before Parliament.

26. Section 30 of the principal Act shall be omitted.

27. For section 36 of the principal Act, the following section shall be substituted, namely:—

“36. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Authority or the Disciplinary Committee or the Tribunal or the Board or the Board of Discipline or the Disciplinary Directorate or any officer of that Government, Council, Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate, for any thing which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.”.

28. After section 36 of the principal Act, the following section shall be inserted, namely:—

“36A. The Chairperson, Presiding Officer, members and other officers and employees of the Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.”.

45 of 1860.

29. After section 38 of the principal Act, the following section shall be inserted, namely:—

“38A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of section 9;

(b) the terms and conditions of service of the Presiding Officer and Members of the Tribunal, place of meetings and allowances to be paid to them under sub-section (3) of section 10B;

(c) the procedure of investigation under sub-section (4) of section 21;

(d) the procedure while considering the cases by the Disciplinary Committee under sub-section (2) and fixation of allowances of the nominated members under sub-section (4) of section 21B;

(e) the procedure to be followed by the Board in its meetings under section 29C; and

(f) the terms and conditions of service of the Chairperson and members of the Board under sub-section (1) of section 29D.”.

30. In section 39 of the principal Act, sub-section (4) shall be omitted.

31. After section 39 of the principal Act, the following section shall be inserted, namely:—

“40. Every rule and every regulation made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not

be made, or issued, the rule, regulation or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification.”.

32. For the First Schedule and the Second Schedule to the principal Act, the following Schedules shall be substituted, namely:—

Substitution of new Schedules for First Schedule and Second Schedule.

“THE FIRST SCHEDULE
 [See sections 21 (3), 21A(3) and 22]

PART I

Professional misconduct in relation to company secretaries in practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation.—In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

(3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part;

(4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;

(5) secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting—

(i) any company secretary from applying or requesting for or inviting or securing professional work from another company secretary in practice; or

(ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council:

Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

(8) accepts a position as a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act;

(10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act, 1956;

1 of 1956.

(11) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, anything which he is required to certify as a Company Secretary, or any other statements relating thereto.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;

(2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) not being a Fellow of the Institute, acts as a Fellow of the Institute;

(2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

(3) while inviting professional work from another Company Secretary or while responding to tenders or enquiries or while advertising through a write up, as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if—

(1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

(2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

THE SECOND SCHEDULE

[See sections 21 (3), 21B(3) and 22]

PART I

Professional misconduct in relation to company secretaries in practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

(1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;

(3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;

(5) fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;

(6) fails to report a material mis-statement known to him and with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;

(10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II

Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;

(2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;

(3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;

(4) defalcates or embezzles moneys received in his professional capacity.

PART III

Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.”.

STATEMENT OF OBJECTS AND REASONS

The necessity to bring out amendments in the Company Secretaries Act, 1980 (the CS Act) arose on account of the changes in the economic and corporate environment in the country over the years. These changes include, *inter alia*, the developments in the capital markets, their growth, the dismantling of the system of economic controls and the need to enable development of an institution that would focus on good corporate governance practices and disseminate the same through instruction and training of its qualified professionals serving in the corporate sector or advising it in professional capacity.

2. Moreover, changes in the CS Act were necessitated by the need to bring about systematic changes in the institutions governed by the Act, including disciplinary procedures to deal with cases of professional misconduct; to ensure quality instruction in the related disciplines and to enable institutional growth and professional development of its members.

3. The proposals to bring out amendments in the CS Act have been prepared on the basis of experience gained in administration of the Act, the recommendations of the High Level Committee "on Corporate Audit and Governance" set up under the Chairmanship of Shri Naresh Chandra and other inputs on the subject made available to the Central Government from time to time.

4. A Bill, namely the Company Secretaries (Amendment) Bill, 2003 was introduced in the Rajya Sabha on 23.12.2003. The Bill was, thereafter referred to the Parliamentary Standing Committee on Finance, whose report was presented to Parliament in February, 2005. Taking into account the recommendations of the Committee, proposals in the Bill have been revised and the Bill is now being introduced as a fresh Bill.

5. Some of the main amendments proposed in the Bill are as follows:—

(a) provision for an institutionalised Disciplinary Mechanism within the framework of the Institute of Company Secretaries of India, which would ensure well considered yet expeditious disposal of complaints against members of the Institute on professional or other misconduct and ensuring faster delivery of justice. The proposals provide for appointment of a Director (Discipline), establishment of a Disciplinary Directorate to investigate complaints, constitution of a Board of Discipline to deal with the cases of minor offences, Disciplinary Committee to deal with cases of major offences within the institutional framework of the Institute;

(b) providing for an Appellate Authority headed by a person, who is or has been a judge of a High Court, to deal with appeals arising from decisions of disciplinary authorities;

(c) establishment of a Quality Review Board, which would also include outside experts to review the quality of services provided by the members of the Institute;

(d) providing enhanced autonomy to the Council in the matter of fixing various fees within prescribed broad limits;

(e) provisions for bringing transparency in financial affairs of the Institute and preparation of annual financial statement (the budget) by the Council; and

(f) enabling the members of the Institute to form multi-disciplinary firms and offer multi-professional services in a competitive and commercial manner.

6. The Bill seek to achieve the above objects.

PREM CHAND GUPTA.

Notes on clauses

Clause 2 seeks to define various expressions used in the Bill.

Clause 3 seeks to provide that the Council may determine the fee, for entry of names in the Register of the institute, up to rupees three thousand which may be increased up to rupees six thousand with the prior approval of the Central Government.

Clause 4 seeks to provide that the Council may determine the fee of fellow members of the Institute up to rupees five thousand which may be increased up to rupees ten thousand with the prior approval of the Central Government.

Clause 5 seeks to provide that the Council may determine the annual fee for the certificate of practice up to rupees three thousand which may be increased up to rupees six thousand with the prior approval of the Central Government. This clause also contains provision which provides for cancellation of certificate of practice under such circumstances as may be prescribed.

Clause 6 seeks to provide for enhancing the strength of the Council of the Institute by making provision for elected members from twelve to fifteen and for nominated members from four to five and makes provision for the manner of election and nomination to be specified by rules. The clause also contains provision debarring persons holding post under the Central Government or the State Government; and for a certain period auditor and a fellow of the Institute, who has been found guilty of any professional or other misconduct under the First Schedule and the Second Schedule, from contesting election to the Council.

Clause 7 seeks to provide that a member of the Council shall be eligible for re-election and re-nomination for a maximum of two consecutive terms. The clause also contains provision which will debar sitting and former Presidents of the Council from contesting elections to the Council.

Clause 8 seeks to provide for settlement of election disputes and for that purpose, establishment of an election Tribunal consisting of a Presiding Officer and two members. It also provides that the terms and conditions of service of the Presiding Officer and members of the Tribunal, their place of meetings and allowances shall be such as may be specified.

Clause 9 seeks to provide that the President shall be head of the Council and also provide for the continuation in office by the Vice-President as well on expiration of duration of the Council, till his successor takes charge.

Clause 10 seeks to provide that a member shall be deemed to have vacated his seat if he has been found guilty of professional or other misconduct and awarded penalty of fine. The clause also seeks to change the period from "six months" to "one year" for not filling up a casual vacancy occurring within this extended period of one year, prior to the date of expiration of the duration of the council.

Clause 11 seeks to provide for enhancement of duration of the Council from three to four years.

Clause 12 seeks to enumerate the functions of the Council and also provides that the Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of the Company Secretaries Act, 1980 (the CS Act) shall be vested in the Council.

Clause 13 seeks to enumerate the functions of the Institute. It also provides that any University established by law or body affiliated to the Institute, may impart education on the subjects covered by the academic courses of the Institute, and also ensure that the award of degree, diploma etc., or designation do not resemble or is identical to one awarded by the Institute.

Clause 14 seeks to, *inter alia*, provide that the Council shall appoint a Secretary of the Council, Director (Discipline), designate an officer as chief executive to carry out the

administrative functions and appoint such other officers and employees as it considers necessary.

Clause 15 seeks to, *inter alia*, provide for constitution of a Finance Committee, increasing the strength of the Executive Committee and the Examination Committee, and reduction of strength of co-opted members in other Committees constituted by the Council from two-thirds to one-third.

Clause 16 seeks to, provide that the Council shall keep accounts in the prescribed manner. It provides for preparation of annual financial statement (the budget), and the annual accounts in the prescribed manner. It also provides that the Council may circulate audited accounts to its members at least fifteen days in advance, and shall cause to be published in the Gazette of India, the audited accounts and the Report of the Council not later than 30th September of the year next following.

Clause 17 seeks to, provide that the list of members of the Institute can be supplied to the members on payment of the prescribed amount. This clause also provides that the Council may determine annual membership fee, differing in amounts according as he is an associate or a fellow of the Institute, up to rupees five thousand which may be increased up to rupees ten thousand with the prior approval of the Central Government.

Clause 18 seeks to provide that the Council may re-enter the name of the member of the Institute, if his name has been removed for non-payment of the requisite fee, on payment of arrears of such fees and an additional fee up to rupees two thousand as may be determined by the Council, which may be increased up to rupees four thousand with the prior approval of the Central Government.

Clauses 19 and 20 seek to provide that the Council may establish a Disciplinary Directorate headed by Director (Discipline) and constitution of Board of Discipline and Disciplinary Committee, the manner of dealing with complaints relating to professional or other misconduct and awarding penalties. While exercising their powers under the CS Act they shall have the powers of a civil court in respect of the matters specified therein.

Clause 21 seeks to add the expression "or other misconduct" in section 22 of the CS Act to bring it in line with the modifications proposed in the Schedules and proposes to make Director (Discipline) responsible for such matters.

Clause 22 seeks to, *inter alia*, provide that the Appellate Authority constituted under the Chartered Accountants Act, 1949 shall be deemed to be the Appellate Authority under the Company Secretaries Act, 1980, to hear appeals from the orders of the Disciplinary Committee and Board of Discipline, constituted under it.

Clause 23 seeks to omit sub-section (3) of section 25 so as to make a separate provision in section 15B of the CS Act for imparting education by Universities and other bodies.

Clause 24 seeks to increase penalties for the persons, contravening the provisions as to signing of documents, etc., not authorised to sign.

Clause 25 seeks to, *inter alia*, provide for establishment of a Quality Review Board, its functions, procedures, the terms and conditions of service of Chairperson and members, which will review the quality of audit and other services provided by the members of the Institute.

Clause 26 seeks to omit section 30 of the principal Act.

Clause 27 seeks to make provision for protection of action taken in good faith.

Clause 28 seeks to declare members, etc., to be public servants under section 21 of the Indian Penal Code.

Clause 29 seeks to confer upon the Central Government the power to make rules to carry out the provisions proposed in the Bill. Sub-clause (2) of this clause enumerates the matters in respect of which such rules may be made.

Clauses 30 and 31 seek to provide for laying of rules, regulations and notifications on the table of both the Houses of Parliament.

Clause 32 seeks to provide for substitution of new Schedules for the existing Schedules.

FINANCIAL MEMORANDUM

The Bill seeks to appoint a Director (Discipline), establish a Disciplinary Directorate, constitute a Board of Discipline, Disciplinary Committee, an Appellate Authority, and establish a Quality Review Board. The expenditure in this regard is to be borne by the Council of the Institute and there shall be no expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3, 4, 5, 17 and 18 of the Bill seek to amend certain provisions of the Company Secretaries Act (1980) the principal Act so as to empower the Council to determine by notification relating to entry of names in Register, registration, as Fellows and Associates, annual membership fee and fee for re-entry of names in register, up to the limits provided in the Bill.

2. Clauses 5 and 6 also seek to amend section 6 of the principal Act so as to empower the Council to cancel the certificate of practice under the circumstances prescribed regulations; and section 9 to empower the Central Government to specify by rules, the manner of election and nomination of the members to the Council.

3. Clause 8 of the Bill seeks to insert a new section 10B so as to empower the Central Government to specify the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, and allowances.

4. Clause 12 of the Bill seeks to substitute section 15 of the principal Act which deals with the functions of the Council. The Council may while carrying out the provisions of the Act, make regulations with respect to prescribing of qualifications for entry in Register, examination fees, etc.

5. Clause 14 of the Bill seeks to substitute section 16 of the principal Act to provide for making regulations relating to duties of the Secretary of the Council, and for salaries, allowances, etc., of officers and employees.

6. Clause 16 of the Bill seeks to amend section 18 of the principal Act so as to empower the Council to prescribe by regulations, the preparation and keeping of the accounts, annual financial statement (the budget) and annual accounts of the Council.

7. Clause 17 of the Bill also seeks to amend section 19 of the principal Act to empower the Council to prescribe by regulations, the amount which a member will have to pay for a copy of the list of members of the Institute.

8. Clause 19 of the Bill seeks to substitute section 21 of the principal Act to empower the Council to prescribe by regulations, the fee to be enclosed while making a complaint on professional or other misconduct of a member; and to empower the Central Government to specify by rules, the procedure for investigation which will be followed by Disciplinary Directorate.

9. Clause 20 of the Bill seeks to insert new section 21B, so as to empower the Central Government to specify, the procedure to be followed by the Disciplinary Committee while considering the cases; and the allowances payable to the nominated members of such Committee.

10. Clause 22 of the Bill seeks to extend certain provisions of the Chartered Accountants Act, 1949 (38 of 1949), relating to Appellate Authority, which shall also be the Appellate Authority for the purposes of the Company Secretaries Act. It further makes enabling provision for the salaries, allowances and other condition of services of officers and other staff members of the Authority.

11. Clause 25 of the Bill seeks to insert a new Chapter VII A (relating to Quality Review Board) in the principal Act so as to empower the Central Government to specify by rules the time, place and the procedure to be followed by the Board in its meetings and the terms and conditions of service of the Chairperson and the members of the Board.

12. The matters in respect of which the said rules or regulations may be made or notifications issued are matters of procedure and administrative detail, and it is not practicable to provide for them in the proposed Bill itself.

13. The delegation of legislative power is, therefor, of a normal character.

YOGENDRA NARAIN,
Secretary-General

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